MIAMI REVIEW — MIAMI, FLORIDA

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

in the Supreme Court of the United States

No. 75-380

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,

Petitioner,

vs.

JONATHAN W. DIXON,

Respondent,

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

ROBERT J. BECKHAM
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66 West Flagler Street
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RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

NATURE OF THE CASE

This is a case in which Jonathan W. Dixon (hereinafter referred to as "Dixon") filed a Federal Employer's Liability action[1] against his employer Seaboard Coast Line Railroad Company (hereinafter referred to as "Seaboard") in a Florida state court.

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[1]The action was brought pursuant to 45 U.S.C. §51 et seq.

Dixon resided in Georgia and sustained an injury in Georgia in the course and scope of his employment. The action was brought in Jacksonville, Florida, less than 100 miles away and the situs of Seaboard's principal place of business in Jacksonville.[2] Seaboard moved to dismiss the case in the Circuit Court on the theory of forum non conveniens, alleging that another forum would be a more convenient place to bring the suit. The lower court denied the motion (see Dixon's Exhibit "A" attached hereto). The lower court, in denying the motion, applied Florida law which does not allow the application of forum non conveniens when one of the parties is a Florida resident; and the Florida courts have defined a corporation having a principal place of business in Florida to be a "resident." See *Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797* (Fla.App.1969); *Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275* (Fla.App.1970), cert. den. 237 So.2d 540; *Seaboard Coast Line Railroad Co. v. Ford, Seaboard Coast Line Railroad Co. v. Britt* (consolidated cases) 238 So.2d 473 (Fla.App.1970), and *Seaboard Coast Line Railroad Co. v. West*, 242 So.2d 156 (Fla.App.1971).

Seaboard then took an interlocutory appeal to the First District Court of Appeal of Florida stating in its assignments of error that the lower court abused its discretion in failing to apply the doctrine of forum non con-

[2]Seaboard has admitted that the Jacksonville headquarters of Seaboard is a principal office (see Seaboard's Appendix 15), and Seaboard, in its brief in the court below, further admitted "that the defendant has an operating office building in Jacksonville, Florida, which certainly can be described as a principal office." Additionally, Jacksonville has been judicially noticed and adjudicated by the Florida courts as the principal place of business of Seaboard. E.g. *Adams v. Seaboard Coast Line Railroad*, 224 So.2d 797 (Fla.App.1969).

veniens.[3] The right to appeal to the intermediate appellate courts of Florida is not absolute by virtue of Florida Appellate Rule 3.9(b), which provides for the dismissal of an appeal where it appears on its face to be frivolous or taken for the purpose of delay. Dixon moved to dismiss the appeal pursuant to that rule (See Dixon's Exhibit "C-1" attached) and the First District Court of Appeal, on November 12, 1974, granted Dixon's motion (see Dixon's Exhibit "C-2" attached hereto.) Thus, the ground for dismissing the appeal was that it was frivolous and taken for delay.

Seaboard then petitioned, on December 12, 1974, for writ of certiorari to the Supreme Court of Florida (see Dixon's Exhibit "D" attached hereto). Seaboard's petition was denied six months later on June 18, 1975, for lack of jurisdiction (see Dixon's Exhibit "E" attached hereto).[4]

Seaboard now seeks a petition for writ of certiorari in the Supreme Court of the United States, filing it within ninety days from the date the Supreme Court of Florida denied its petition for writ of certiorari. Seaboard, however, directs the writ to the First District Court of Appeal.

[3]See Dixon's Exhibits "B-1" and "B-2" attached hereto.

[4]Florida Appellate Rule 4.5(c)(6) allows a petition for writ of certiorari to be taken from the District Court of Appeal to the Supreme Court of Florida within thirty days. If an automatic stay is desired, the petition must be taken within fifteen days from the District Court's decision. Here, the petition was sought by Seaboard after the fifteen day period and, thus, no stay was granted. (See Dixon's Exhibit "F" attached hereto.)

REASONS FOR NOT GRANTING THE WRIT

We respectfully suggest this Court should deny the Petition for the following grounds:

A. *The petition for writ of certiorari should be directed to the state trial court rather than the District Court of Appeal.*

Because the Supreme Court of Florida refused to take jurisdiction of the case below, counsel agrees with Seaboard that the writ of certiorari should not run to the Supreme Court of Florida.

Normally, the writ of error from the United States Supreme Court is to review judgments rendered "by the highest court of a State in which a decision could be had," 28 U.S.C. §1257. However, the writ should be directed to the judgment of an inferior state court where the higher courts have declined an appeal. See *Clark v. Pennsylvania*, 128 U.S. 395, (1888), *Gregory v. McVeigh*, 23 Wall. 294 (1875), and *Chicago & E.I.R. Co. v. Industrial Commission*, 284 U.S. 296 (1932). See also *Missouri K. & T.R. Co. v. Elliott*, 184 U.S. 530 (1902), and *Western Union Tel. Co. v. Hughes*, 203 U.S. 505 (1906).

It is clear that when an appellate court could—but refuses—to take jurisdiction of a case, the inferior court becomes the highest state court from which to petition to the United States Supreme Court.

Here, the Supreme Court of Florida refused to take jurisdiction of the case although it had the discretionary power to do so, but also was this true of the intermediate

appellate court, to-wit: the District Court of Appeal. Seaboard filed an interlocutory notice of appeal in the First District Court of Appeal, *but* the First District Court of Appeal dismissed the case and refused to hear it because the appeal was frivolous and filed for delay. Thus, the highest state court in which a decision could be had in the instant case was the trial court.

In *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1968), the petitioner (Nash) had a hearing before the State Unemployment Compensation Board. (This, for all intents and purposes, would be considered the "trial court.") Nash, then, sought certiorari review of that decision in the Florida District Court of Appeal which, per curiam, refused to hear the case. (Nash did not even then apply for relief from the Florida Supreme Court apparently because that Court, at that time, would not take jurisdiction of cases from a per curiam decision of a District Court of Appeal denying a petition for certiorari (See 389 U.S. at p. 237). Accordingly, the petition for writ of certiorari in the United States Supreme Court was directed to the "trial court," i.e., the Compensation Board, because the two appellate courts, i.e., the District Court of Appeal and Supreme Court, could have, but refused to take jurisdiction of the case.

It is abundantly clear from the record that both appellate courts in the case at bar have refused to take jurisdiction of the case and the writ should be directed to the trial court. Failure to direct a writ to the proper court requires the Supreme Court of the United States to dismiss the writ. See *Randall v. Tippecanoe County*, 261 U.S. 252 (1923).

B. *The decision of the state court did not involve a federal question.*

Because Seaboard seeks a writ of certiorari to the District Court of Appeal, First District, we must look to that opinion to determine whether the First District Court of Appeal's decision was based on a federal question. This Court has no jurisdiction to review a state court decision unless it appears affirmatively from the record not only that a federal question was presented for decision to the highest court of the state, but that the federal question was necessary to the determination of the case. See *Southwestern Bell Telephone Co. v. State of Oklahoma*, 303 U.S. 206 (1938).

The decision should have involved a federal question which was applied by the court in arriving at its decision. See *Ocean Insurance Co. v. Polleys*, 38 U.S. 157, (1839).

Although a federal question may be raised in state court, this Court will not entertain jurisdiction of the writ to the state court if the state court's decision was clearly decided on grounds not involving a federal question. E.g., *Connecticut ex rel. New York & N. E. R. Co. v. Woodruff*, 153 U.S. 689 (1894).

In looking at the decision of the court to which this writ is directed, i.e., the First District Court of Appeal, we see that the court dismissed the case because the appeal was frivolous and taken for delay. Thus, the decision (if that is what it is to be called) did not in any way involve a federal question. This Court has refused to take jurisdiction of state court decisions, such as the

one herein, which were dismissed for reasons not involving a federal question. See *Anderson v. Hultberg*, 238 U.S. 605 (1915).

There is no way one can construe a decision of the District Court of Appeal dismissing a claim, without opinion, for frivolity as resting upon federal claim.

Even assuming that the per curiam decision of the First District Court of Appeal is tantamount to an affirmance of the trial court's ruling that the doctrine of forum non conveniens was not applicable in the case below, however, that decision is nevertheless solely a "question of state law, and not subject to review by the United States Supreme Court." *Smith v. Adsit*, 83 U.S. 185, (1872).

The essence of the question in the court below was whether or not the State of Florida would—as a matter of state policy—apply the doctrine of forum non conveniens only to non-residents, and not to residents. This determination is a proper function of the states and, in the absence of discriminatory application, is a local function not subject to federal review. *Missouri ex rel. Southern Railroad Co. v. Mayfield*, 340 U.S. 1 (1950).

Seaboard's petition (pp. 15-19) reveals the absence of any federal question as well. What Seaboard seeks from this Court is a ruling that the Florida Supreme Court erred when it denied Seaboard's assertion that the decision below *conflicted* with the Florida Supreme Court's

decision in *Fowler v. Chillingworth*, 94 Fla. 1, 113 So. 667 (1927).[5] Again, in footnote 7 (petition pp. 18-19) Seaboard asserts a *factual finding* of the Florida courts is erroneous—a purely "state law" matter.

C. *Florida does not violate the "equal protection of the law clause" in its application of the forum non conveniens doctrine.*

The two bases for the *possibility* that a state's venue policy may involve a federal question, said Justice Frankfurter, would be (a) if a state (mistakenly) felt it was bound by federal law and could not formulate its own policy for the application of the doctrine, or (b) if a state discriminated as between its citizens and those of other states. (*Missouri v. Mayfield*, 340 U.S. at pp. 3-4). Neither predicate is found in Florida:

(A) The Florida courts have applied the doctrine of forum non conveniens as a matter of state policy—and not under a (mistaken) view that federal law precludes state determination. Southern Rwy. Co. v. Bowling

[5] *In Fowler v. Chillingworth*, plaintiff filed a mortgage foreclosure proceeding against a corporation chartered in Florida. However, the resident agent and all the corporate officers had moved from Florida and the Sheriff issued a non-executed return. The *sole* question before the Florida Supreme Court was whether or not proper service could be obtained upon a Florida corporation when there were no officers available for service of process. The court, in the context of the facts before it, merely stated that a corporation is always a resident of the state where it is chartered so that service can be made without the presence of corporate officers. It was not necessary for the court to mention, under those circumstances, that even though a corporation may be a "resident" of the state where it is chartered, it can be (and in 1975 usually is) a "resident" of other states for particular purposes, *i.e.*, venue, taxation, service of process, jurisdiction, etc.

129 So.2d 433 (Fla.App. 1961); Southern Rwy. Co. v. McCubbins 196 So.2d 512 (Fla.App.1967); Adams v. S.C.L. 224 So.2d 797 (Fla.App.1969).

(B) The Florida policy is a non-discriminatory one, applying equally to all, and requires as a *sine qua non* that both parties be "non-residents" before the doctrine can be invoked.

E.g., Adams v. S.C.L., supra; Hagen v. Viney 124 Fla 747, 169 So. 391 (1936).

Seaboard asserts denial of equal protection by Florida in two fashions:

1. The Florida courts' factual determination that Seaboard's operations in Florida are of such magnitude as to justify a finding that its principal place of business is in Florida; and

2. The Florida policy precluding the application of the doctrine of forum non conveniens to litigation involving residents of Florida.

Both assertions fail.

1. *Residency: Facts Established*

As Seaboard acknowledges, the issue as to its "resident" status was settled in *Adams v. S.C.L.*, 224 So.2d 797 (Fla.App.1969). Thereafter, the matter was repeatedly presented to the Florida appellate courts which, in turn,

repeatedly found Seaboard to be a "resident" for purposes of the doctrine of forum non conveniens. *Shaw v. S.C.L.*, 229 So.2d 275 (Fla.App.1970) *cert. den.*, 237 So. 2d 540 (Fla.1970); *S.C.L. v. Ford & Britt*, 238 So.2d 473 (Fla.App.1970); and *S.C.L. v. West*, 242 So.2d 156 (Fla. App.1971), *cert. den.*, 246 So.2d 112 (Fla.1971). As Seaboard likewise acknowledges, as a result of the fact that it had been factually adjudicated to maintain its principal place of business in Florida by the above decisions, its instant effort was dismissed upon respondent's motion, grounded upon the frivolous nature of Seaboard's position on this well adjudicated factual matter.

2. *Residency: A Valid Criterion*

Seaboard's complaint that the situs of its principal place of business should not control such factual finding is quickly demolished by reference to 28 U.S.C., §1332 (c). Congress there recognized that the location of a corporation's principal place of business shall control the determination as to whether such corporation may have access to the federal courts. Surely, Florida may utilize the same criterion.

Were Seaboard — like Southern Railway — factually found to have its principal place of business in Virginia, then Seaboard—like Southern—could get relief in appropriate circumstances. See *Southern Rwy. Co. v. McCubbins*, 196 So.2d 512 (Fla.App.1967), Seaboard, like every other Florida resident, however, is logically and non-discriminatorily called upon to respond to the courts in its "home" state. This precisely meets the test of *Missouri v. Mayfield*, supra:

> "Residents" and "non-residents" may be treated differently under the Constitution, so long as a state does not favor its own citizens. See 340 U.S. pg. 4.

The Florida courts are directly in line with the established precedent of this Court. Seaboard is treated by the courts of Florida "in the same manner as if it were a citizen of Florida." *Adams v. S.C.L.*, 224 So.2d 797, 802 (Fla.App. 1969).

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

R. J. BECKHAM
BECKHAM & McALILEY
A Professional Association
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130
Attorney for respondent

R. J. BECKHAM

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing Response to Petition for Writ of Certiorari to the District Court of Appeal, First District, State of Florida, was mailed this 8 day of October, 1975, to George D. Gabel, Jr., Wahl and Gabel, 405 Florida Title Building, Jacksonville, Florida 32202.

R. J. BECKHAM

APPENDIX

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR DUVAL COUNTY.

NO. 74-4022-CA DIVISION C

JONATHAN W. DIXON,

Plaintiff,

vs.

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,

Defendant.

ORDER ON MOTIONS

This cause came on for hearing on the matters herein disposed of and was argued by counsel for the respective parties.

The chief contention of defendant is that the action should be dismissed under doctrine of "forum non conviens". Although there are several sound reasons for the application of the doctrine, the decisions in Adams vs. Seaboard Coast Line Railroad Company (Fla. App. 1) 244 So.(2d) 797, and Shaw v. Seaboard Coast Line Railroad Company (Fla. App. 1) 229 So.(2d) 275, interdict a judge of this Court from exercising any discretion in the matter.

Accordingly, it is ORDERED AND ADJUDGED that the "Motions of Defendant", filed July 12, 1974, are denied, and it is required to answer the complaint within ten days from date hereof.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 5th day of September, A.D. 1974.

/s/ John M. McNatt

CIRCUIT JUDGE

cc: Beckham & McAliley
1010 Concord Bldg.
Miami, Florida 33130

George D. Gabel, Jr., Esq.
1014 Barnett Bank Bldg.
Jacksonville, Florida 32202

EXHIBIT "B-1"

[TITLE OMITTED]

NOTICE OF INTERLOCUTORY APPEAL

SEABOARD COAST LINE RAILROAD COMPANY, a corporation, the Defendant in the above-styled cause, takes and enters its interlocutory appeal to the Court of Appeal, First District, State of Florida, to review the order, judgment or decree of the Circuit Court, Fourth Judicial Circuit of Florida, in and for Duval County, Florida, bearing the date the 5th day of September, A.D. 1974, and rendered on the 5th day of September, 1974, by the filing thereof with the Clerk of the above-captioned Court. The nature of the order appealed from is an arder denying this Defendant's Motion to Dismiss under the common law doctrine of Forum Non Conveniens. All parties to said cause are called upon to take notice of this interlocutory appeal.

TOOLE, TAYLOR, MOSELEY,
GABEL & MILTON

By /s/ George D. Gabel, Jr.

GEORGE D. GABEL, JR.
1014 Barnett Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, Attorneys for Plaintiff, by mail, this 16th day of September. 1974.

/s/ George D. Gabel, Jr.

Attorney

EXHIBIT "B-2"

[TITLE OMITTED]

ASSIGNMENTS OF ERROR

The Defendant, SEABOARD COAST LINE RAILROAD COMPANY, a corporation, assigns as error to be asserted and relied upon by it on its Interlocutory Appeal, simultaneously entered in this cause, the following:

1. The above-styled Court erred in denying Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens by the entry of its Order dated September 5, 1974, and filed with the Clerk of said Court on September 5, 1974.

2. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens constituted an abuse of said Court's judicial discretion, and said Court is thus in error.

3. Having made a judicial determination in its Order of September 5, 1974, that there are several sound reasons for the application of the doctrine of Forum Non Conveniens in this case, the above-styled court erred in refusing to dismiss this action on said grounds; and said Court is thus in error.

4. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens constituted an improper rejection of the established doctrine of Forum Non Conveniens, and said Court is thus in error.

5. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens deprives this Defendant of its constitutional right to "equal protection of the laws", as guaranteed by Sections 1, 4 and 12 of the Declaration of Rights to the Constitution of the State of Florida, and by the Fourteenth Amendment to the Constitution of the United States of America; and said Court is thus in error.

Dated at Jacksonville, Florida this 16th day of September, A.D., 1974.

TOOLE, TAYLOR, MOSELEY,
GABEL & MILTON

By /s/ George D. Gabel, Jr.

GEORGE D. GABEL, JR.
1014 Barnett Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant

I HEREBY CERTIFY that a copy hereof has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, Attorneys for Plaintiff, by mail, this 16th day of September, 1974.

/s/ George D. Gabel, Jr.

Attorney

EXHIBIT "C-1"

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

NO. W-451

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,
Appellant,

vs.

JONATHAN W. DIXON,
Appellee.

MOTION TO QUASH APPEAL AND ALTERNATIVE MOTION TO DISMISS

Appellee, pursuant to Florida Appellate Rule 3.9, moves the Court to enter an Order quashing this appeal on the grounds that it is frivolous or taken only for the purpose of delay.

In support of this motion, appellee would show the Court that the precise point of law raised by appellant has been previously adjudicated by this Court in the following reported decisions:

1. Adams v. S.C.L. RR.,
   224 So.2d 797 (Fla.App.1969);

2. Shaw v. S.C.L. RR.,
229 So.2d 275 (Fla.App.1970); cert.den. 237 So. 2d 540;

3. S.C.L. RR v. Ford,
and
S.C.L. RR. v. Britt,
(consolidated cases) 238 So.2d 473 (Fla.App. 1970);

4. S.C.L. RR v. West,
242 So.2d 156 (Fla.App.1971)

In the alternative, appellee would show that this appeal should be dismissed pursuant to Florida Appellate Rule 4.2(c), which states, with specific regard to interlocutory appeals, that:

> "If it affirmatively appears that the appeal is frivolous, was not taken in good faith, was taken for delay, or is without substantial merit, it will be dismissed and the cost of the proceeding imposed on the appellant."
> (Emphasis added)

In support of this alternative motion, appellee would show that this appeal is "without substantial merit" in that the specific point herein appealed has been already decided in the five above-mentioned prior cases, against this same appellant.

WHEREFORE, appellee moves this Court to quash or, alternatively, dismiss this appeal.

WE CERTIFY that a true copy of the foregoing was mailed this 9 day of October, 1974 to George Gabel, Esq., 1014 Barnett Bank Building, Jacksonville, Florida 32202.

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A Professional Association
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130
Attorneys for appellee

By /s/ R. J. Beckham
R. J. BECKHAM

EXHIBIT "C-2"

[TITLE OMITTED]

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED

Opinion filed November 12, 1974.

An Interlocutory Appeal from the Circuit Court for Duval County. John M. McNatt, Judge.

George D. Gabel, Jr., of Wahl & Gabel, for Appellant.

R. J. Beckham, of Beckham & McAliley, for Appellee.

PER CURIAM.

Interlocutory appeal dismissed. See Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla.App. 1st, 1969); Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla.App. 1st, 1970), cert.den. 237 So.2d 540 (Fla. 1970); Seaboard Coast Line Railroad Co. v. Ford and Britt, 238 So.2d 473 (Fla.App. 1st, 1970); and Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla.App. 1st, 1971), cert.den. 246 So.2d 112 (Fla. 1971). We have considered Fowler v. Chillingworth, 94 Fla. 1, 113 So.667 (Fla. 1927) cited by appellant in its reply to appellee's motion.

RAWLS, Chief Judge,

McCORD and JOHNSON, JJ., Concur.

EXHIBIT "D"

IN THE SUPREME COURT OF THE STATE OF FLORIDA

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No. _____

_____

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,
Petitioner,

-vs-

JONATHAN W. DIXON,
Respondent.

_____

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

_____

CERTIFICATE OF FILING IN THE DISTRICT COURT OF APPEAL OF PETITION FOR CERTIORARI

Pursuant to Florida Appellate Rule 4.5c(6), Petitioner files herewith in the Florida District Court of

Appeal, First District, a copy of Petition for Certiorari, which it is today forwarding to the Supreme Court of Florida.

WAHL and GABEL

By /s/ George D. Gable, Jr.

GEORGE D. GABEL, JR.
405 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Petitioner

I HEREBY CERTFY that a copy of the foregoing has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, have filed the original in the District Court of Appeal, First District, and furnished a copy to the Supreme Court of Florida, by mail, this 10th day of December, 1974.

/s/ George D. Gabel, Jr.

[TITLE OMITTED]

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, Seaboard Coast Line Railroad Company (sometimes hereinafter called SCL), presents this, its petition for a writ of certiorari and states:

1. Petitioner seeks to have reviewed a decision of the District Court of Appeal, First District, dated the 12th day of November, 1974, and filed in the records of said District Court on the 12th day of November, 1974, in Minute Book 7, Page 342.

2. This petition is presented under the pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida, and Rule 4.5c(6), of the Florida Appellate Rules.

3. This petition is accompanied by a conformed copy of the pertinent proceedings, including the decision petitioner seeks to have reviewed, and a supporting brief.

4. The following are the facts of the case:

(a) This is a suit by an employee, Jonathan W. Dixon, (hereinafter sometimes called Dixon) against his employer (SCL) seeking money damages for claimed personal injuries allegedly sustained while in the course and within the scope of his employment. The suit has been

brought under the provisions of the Federal Employers' Liability Act (FELA), Title 45, Section 51 et seq., U.S. Code Annotated.

(b) Respondent Dixon is a nonresident of the State of Florida, and is a resident of the State of Georgia. The alleged accident which is the subject matter of respondent's action occurred outside the State of Florida at Homerville, Georgia. Petitioner SCL is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, with its corporate headquarters and principal corporate officers headquartered and located in Richmond, Virginia. The said accident, if not wholly caused by the negligence of the plaintiff, was caused by the negligence of C. M. Eunice, Jr., trading as Homerville Pole Company in Homerville, Georgia, and since any cause of action by SCL for indemnity against said C. M. Eunice, Jr. did not arise out of any activities of the potential third party defendant in the State of Florida, SCL will be unable to have the third party action disposed of in the present litigation.

(c) Petitioner SCL, the defendant below, filed a motion to dismiss under the doctrine of forum non conveniens, together with a supporting factual affidavit. No other evidence was before the court.

(d) The trial court denied petitioner's motion to dismiss, and in its order, dated September 5, 1974, made the following recital:

> "Although there are several sound reasons for the application of the doctrine, the decisions in Adams v. Seaboard Coast Line Railroad Company, (Fla.App.1) 224 So. (2d) 797 and Shaw v. Seaboard Coast Line Railroad Company (Fla. App.1) 229 So. (2d) 275, interdict a judge of this Court from exercising any discretion in the matter."

5. On the foregoing facts the District Court of Appeal, First District, was presented with the following point of law:

> In a case in which both parties to the action are nonresidents and the cause of action sued upon arose in a jurisdiction outside of Florida, did the trial court err in refusing to exercise any discretion in determining whether it should apply the doctrine of forum non conveniens as to this defendant?

On this point of law the District Court of Appeal, First District, rendered the following per curiam decision:

> "Interlocutory appeal dismissed. See Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla.App.1st, 1969); Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla.App.1st, 1970), cert.den. 237 So.2d 540 (Fla., 1970); Seaboard Coast Line Railroad Co. v. Ford and Britt 238 So.2d 473 (Fla.App.1st, 1970); and Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla.App.1st, 1971), cert.den. 246 So.2d 112 (Fla., 1971), We have considered Fowler v. Chillingworth, 94 Fla. 1, 113 So.667 (Fla. 1927) cited by appellant in its reply to appellee's motion."

6. The sole point of law involved in this petition concerns the residence of SCL. If SCL is a nonresident of the State of Florida, then it is entitled to seek the benefits of the doctrine of forum non conveniens and to make application to the sound discretion of the trial court in determining whether it should retain jurisdiction of the action or dismiss it without prejudice to the right of the respondent to reinstitute the action in a more appropriate and convenient forum.[1] That principle is stated in Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla. 1st D.C.A., 1969,[2] at page 800 where the District Court of Appeal, First District, said as follows:

> "From the foregoing decisions the principle emerges as the recognized law of this state that if a transitory action is filed in a court of Florida between nonresident parties seeking to litigate a cause of action accruing in a foreign jurisdiction, the trial court is accorded a sound discretion in determining whether it should retain jurisdiction of the action or dismiss it without prejudice to the right of the plaintiff to reinstitute the action in a more appropriate and convenient

[1]The trial court never made a determination on "convenience factors" whether the motion to dismiss under the doctrine of forum non conveniens should be granted, although it stated that "there are several sound reasons for the application of the doctrine" in this case. The only holding was that it was divested of any discretionary powers to apply the doctrine because of the decisions in Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797, (Fla., 1st D.C.A., 1969), and Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla., 1st D.C.A., 1970).

[2]The District Court of Appeal, First District, in its order dismissing the interlocutory appeal, relies upon the case of Adams v. Seaboard Coast Line Railroad Co. 224 So.2d 797 (Fla., 1st D.C.A., 1969). The other cases cited by the District Court of Appeal in its opinion were subsequently decided on the same basis as the Adams decision.

> forum. . . . In the ultimate, however, it is seen that the application of the doctrine of forum non conveniens is restricted to the limited category of cases in which both parties to the action are nonresidents, and the cause of action sued upon arose in a jurisdiction outside of Florida." [emphasis supplied]

The District Court held, however, that under the facts as presented in the Adams case, supra, SCL, even though a Virginia corporation, is nonetheless a resident of Florida for all practical purposes. The Court said at page 801 as follows:

> "For all intents and practical purposes insofar as proper venue of this action is concerned, defendant occupies the same position as does a Florida citizen or a Florida corporation. It would appear to us that the mere fact that it received its corporate charter from some other state would not alter its position as an operating entity having its official headquarters and principal place of business in Florida."

The District Court's holding in the instant case, based upon the precedent in the Adams case, supra, in which it finds that SCL is a resident of Florida, is a conclusion that is contrary to and is in direct conflict on the same point of law with this Court's decision in Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667 (Fla., 1927).[3]

[3]Petitioner submits that "for all practical purposes" on the record before this Court in this case, the residence of SCL is in Virginia, since the corporate headquarters and principal corporate officers reside in Virginia. Even more importantly, however, the legal residence of the petitioner is in Virginia.

(a) Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667 (Fla., 1927), is the landmark case in Florida dealing with the question of the residence of a corporation. That case is in direct conflict with the decisions relied upon by the District Court of Appeal and is the primary authority upon which this petition is predicated, but in not one of the cases cited by the District Court of Appeal in dismissing the appeal, is the case of Fowler v. Chillingworth, supra, dealt with or even mentioned. In Fowler v. Chillingworth, supra, this Court flatly held that the mere fact that a corporation received its corporate charter from some other state fixes the exclusive residence of that corporation within the state which created it,[4] which clearly shows that the residence of the Seaboard Coast Line Railroad Company is solely in the State of Virginia and that said company, the petitioner herein, is entitled to apply to the trial court to exercise its discretion in the application of the doctrine of forum non conveniens.

(b) Likewise, in Gay v. Bessemer Properties, 159 Fla. 737, 32 So.2d 591 (Fla., 1947), this Court held that a corporation can have no other legal domicile than the state in which it was originally incorporated and has at all times existed as a corporate entity.

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[4]Cf. Adams v. Seaboard Coast Line Railroad Co., supra at page 801, where the District Court said "it would appear to us that the mere fact that (SCL) received its corporate charter from some other state would not alter" the fact that for all practical purposes SCL is a Florida resident. That erroneous conclusion is based upon a factual finding (which in itself is incorrect) that SCL's principal place of business is in Florida. "Principal place of business" is the language used exclusively in establishing jurisdiction in the federal court, based upon diversity of citizenship, codified in Title 28, Section 1332(c), U.S. Code Annotated, and has no relevance in any other context.

(c) Furthermore, in the case of Southern Railway Co. v. McCubbins, 196 So.2d 512 (Fla., 3rd D.C.A., 1967), the District Court of Appeal, Third District, applied the doctrine of forum non conveniens on behalf of the Southern Railway Company, (which is also Virginia corporation). For the Seapoard Coast Line Railroad Company to be in a position where the trial courts in this state are divested of all discretionary powers to apply the doctrine of forum non conveniens to it, denies and deprives SCL of the equal protection of the laws as guaranteed to it by Sections 2, 9 and 21 of the Declaration of Rights to the 1968 Revision of the Constitution of the State of Florida and by the Fourteenth Amendment to the Constitution of the United States.

7. The decision of the District Court of Appeal, First District, which petitioner seeks to have reviewed is in direct conflict with the above-mentioned decisions of this Court and of the District Court of Appeal, Third District. Because of the reasons and authorities set forth in petitioner's brief, it is believed that the decision hereby sought to be reviewed is erroneous and that the conflicting decisions of this Court and of the District Court of Appeal, Third District, are correct and should be approved by this Court as the controlling law for the State of Florida.

WHEREFORE, petitioner requests this Court to grant a writ of certiorari and enter its order quashing the decision and order hereby sought to be reviewed, approving the decisions of this Court and of the District

Court of Appeal, Third District, as the correct decisions, and granting such other and further relief as shall seem right and proper to the Court.

WAHL and GABEL

By /s/ George D. Gabel, Jr.

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EXHIBIT "E"

SUPREME COURT OF FLORIDA
JANUARY TERM. A. D. 1975
WEDNESDAY, JUNE 18, 1975

CASE NO. 45,597
DISTRICT COURT OF APPEAL,
FIRST DISTRICT
W-451

[Filed June 20, 1975]

SEABOARD COAST LINE RAILROAD CO.,
Petitioner,

vs.

JONATHAN DIXON,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), and it appearing to the Court that it is without jurisdiction it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, BOYD, OVERTON, and ENGLAND, JJ., concur

A True Copy

W

CC: Hon. Raymond E. Rhodes, Clerk
Hon. S. Morgan Slaughter, Clerk
Hon. John M. McNatt, Judge

George D. Gabel, Jr., Esquire
James E. Williams, Esquire
R. J. Beckham, Esquire

TEST:

Sid J. White
Clerk Supreme Court

By: /s/ Judy Whittle
Deputy Clerk

EXHIBIT "F"

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1975
THURSDAY, SEPTEMBER 25, 1975

I, SID J. WHITE, Clerk of the Supreme Court of Florida do hereby certify that a Petition for Writ of Certiorari in the case of Seaboard Coast Line Railroad vs. Jonathan W. Dixon, Case No. 45,597, was filed in the Supreme Court of Florida on December 12, 1974 and said Petition for Writ of Certiorari was denied on June 18, 1975 by this Court.

IN WITNESS WHEREOF I have hereunto set my hand and official Seal of the Supreme Court of Florida, at Tallahassee, the Capital, this the 25th day of September, 1975.

/s/ Sid J. White
Clerk of the Supreme
Court of Florida